

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

**LOCAL 295/LOCAL 851 IBT EMPLOYER)
GROUP PENSION TRUST AND WELFARE)
FUNDS AND DISTRICT NO. 9, *et al.*,) Case No. 1:08-cv-421
Plaintiffs,) (Judge Sandra S. Beckwith)
-v-) (Magistrate Judge Timothy S. Black)
FIFTH THIRD BANCORP, *et al.*,)
Defendants.)**

DEFENDANTS' NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF THEIR MOTION TO DISMISS

Defendants submit this Notice of Supplemental Authority to direct the Court's attention to the Southern District of New York's recent decision in *Blackmoss Investments Inc. v. ACA Capital Holdings, Inc.*, No. 07 civ. 10528, 2010 U.S. Dist. LEXIS 2899 (S.D.N.Y. Jan. 14, 2010) (attached at Tab A), in which the court dismissed claims brought under Sections 11 and 12(a)(2) of the Securities Act of 1933. This decision provides further support for Defendants' Motion to Dismiss Plaintiffs' Consolidated Class Action Complaint (Doc. No. 78) and the Underwriter Defendants' Supplemental Memorandum Supporting Motion to Dismiss (Doc. No. 79). The court held that the defendant company, which saw its stock price fall from \$13.00 per share to \$0.05 per share, had in fact disclosed the information that the plaintiffs alleged was withheld. Furthermore, the court independently dismissed the plaintiffs' claims based on the defendants' negative causation defense, holding that in light of the defendants' disclosures, the plaintiffs could not establish a causal relationship between the defendants' alleged misrepresentations and the subsequent decline in the defendant company's stock price. The court dismissed the complaint with prejudice.

Dated: February 17, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon all counsel of record via the Court's ECF system this 17th day of February, 2010.

s/ Anthony M. Verticchio
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